

# **California Integrated Waste Management Board**

## **Permitting and Enforcement Committee**

**July 16, 1998**

### **AGENDA ITEM 6**

#### **ITEM:**

**CONSIDERATION OF ADOPTION OF FINANCIAL ASSURANCE REGULATIONS FOR SOLID WASTE LANDFILLS: LOCAL GOVERNMENT FINANCIAL TEST AND LOCAL GOVERNMENT GUARANTEE**

#### **I. SUMMARY**

The purpose of this item is to provide a forum for a public hearing after the conclusion of the 15 day public comment period and bring forward for consideration of adoption by the Board of the attached new financial assurance regulations, the Local Government Financial Test (LGFT) and Local Government Guarantee, LGG (Attachment #1).

Staff is proposing these regulations to add to current State financial assurance regulations two new financial assurance mechanisms developed by the United States Environmental Protection Agency (EPA) for local government owners/operators of municipal solid waste landfills. The LGFT allows local governments to meet financial assurance obligations for postclosure maintenance and corrective action costs by demonstrating their financial strength. A local government interested in providing a LGG for a landfill operated by another public agency or a private firm must also pass the LGFT.

Staff determined the LGFT and LGG regulations have no environmental impact. A Notice of Exemption from the California Environmental Quality Act (CEQA) was filed, and the public review period ended on June 1, 1998.

The regulations were distributed to interested parties on November 21, 1997 and published in the California Regulatory Notice Register. The 45 day comment period was from November 21, 1997 to January 5, 1998. The scope of this regulatory package is limited to the new financial assurance regulations, the LGFT and LGG.

The regulations were noticed for an additional 15 day comment period to make public minor revisions to the proposed regulations. The 15 day comment period was from June 22, 1998 through July 7, 1998.

#### **II. PREVIOUS BOARD AND COMMITTEE ACTION**

On June 17, 1997 the Permitting and Enforcement Committee approved development of the proposed regulations and the rulemaking including the formal 45 day public notice.

On January 28, 1998 the Board adopted the LGFT and LGG regulations as recommended by staff. Today's item includes minor changes to the proposed regulations and provides a public hearing after the conclusion of the 15 day public comment period for these changes.

### **III. OPTIONS FOR THE BOARD OR COMMITTEE**

Committee members may decide to:

1. Approve the LGFT and LGG regulations as recommended by staff and forward to the Board for adoption.
2. Direct staff to revise the regulations and provide an additional public comment period, if necessary.

### **IV. STAFF RECOMMENDATION**

Staff recommends the Committee forward the LGFT and LGG regulations as presented in this agenda item to the Board for adoption.

### **V. ANALYSIS**

During the 45 day comment period, staff received comments from 2 interested parties. Attachment #2 provides the commentors, comments, and staff response.

The proposed regulations with minor changes were re-noticed for a 15 day period, and sent to the commentors listed on Attachment #2. The official 15 day comment period had not yet ended at the time this item was prepared. A list of commentors, comments and staff responses will be provided at the Committee meeting.

#### **Background:**

This rulemaking is based on new federal regulations issued in 1996 (40 CFR Part 258.74). Public Resources Code (PRC), section 43601 specifies that operators of solid waste landfills are required to use financial assurance mechanisms in federal or state regulations, and also allows the CIWMB to condition the use of a mechanism in federal law. Addition of the LGFT and LGG to current state financial assurance regulations assures operators that all allowable mechanisms can be found in one place, and that the financial assurance regulations are complete.

The proposed regulations provide public operators with financial assurance alternatives for postclosure maintenance and corrective action costs. The proposed regulations do not allow the use of the new mechanisms to assure closure costs.

The LGFT regulation defines an operator's eligibility to use the LGFT. In order to pass either Alternative 1 or Alternative 2, the test must be based on financial statements prepared in conformity with generally accepted accounting principles (GAAP) for governments and audited by an independent certified public accountant. Alternative 1 requires a local government to pass a liquidity ratio and debt service ratio. Alternative 2 requires a local government with outstanding rated general obligation bonds to document a current investment grade bond rating by Standard and Poor's or Moody's.

The LGG regulation defines a local government's eligibility to use the LGG to promise to pay specified debts or perform specified obligations for another public or private landfill. To use the LGG a guarantor must satisfy the requirements of the LGFT based on the guarantor's financial statements prepared in conformity with GAAP for governments and audited by an independent certified public accountant.

### **Rulemaking Process:**

There were 2 commentors during the 45 day comment period. One comment was outside the scope of this regulations package. The other comment was noted, but no modification was made to the regulations.

The 15 day notice was needed, because section 22249(j)(4) was changed from the proposed regulations published with the original 45 day notice.

### **Key Issues:**

The minor change to section 22249(j)(4) is necessary to simply bring the requirements for the special certified public accountant (CPA) letter up-to-date. Board staff were informed that EPA determined the former CPA report requirements have become inconsistent with current professional auditing standards. The change provides consistency with EPA guidance and specifies the new CPA report requirements. Additional non-substantive clarifying changes are included below:

- *Section 22249(j)(4) was modified as follows:*

(4) A letter from an independent certified public accountant that performed the audit ~~stating that~~:

(4)(A) Stating that he or she has reviewed the letter required by section (j)(1) from the chief financial officer including data derived from the financial statements for the latest completed fiscal year of the operator or the guarantor, and compared the data with the amounts in the financial statements; and

(4)(B) ~~Based on the comparison, no matters came to his or her attention that caused him or her to believe that the specified data should be adjusted~~ Describing the procedures performed and related findings, including whether or not there were discrepancies found in the comparison, based on an agreed-upon procedures engagement performed in accordance with American Institute of Certified Public accountants, Inc.'s (AICPA'S) Statement on Auditing Standards No. 75, Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts or Items of a Financial Statement.

- *Section 22249(j)(1) was modified as follows:*

(1) A letter on the local government's letterhead stationary that is worded and completed as specified in Form CIWMB 112 ~~(6/97)~~ (7/98), which is incorporated by reference, which contains an original signature of the local government's chief financial officer. An operator or guarantor shall use Form CIWMB 112 ~~(6/97)~~ (7/98) to demonstrate or guarantee financial responsibility for postclosure maintenance costs and/or corrective action costs.

- *Section 22249.5(b) was modified as follows:*

- (b) The guarantee shall be worded and completed as specified by form CIWMB 113(~~6/97~~)(7/98), which is incorporated by reference.

There has been no change to the effect of the proposed regulations from that stated in the original Notice of Proposed Regulatory Action.

**Fiscal Impacts:**

No overall significant fiscal effect, since the new financial assurance mechanisms will be substituted for existing mechanisms for local governments.

**VI. ATTACHMENTS**

1. Local Government Financial Test and Local Government Guarantee Regulations
2. Comment and Response from 45 day Comment Period
3. Resolution #98-

**VII. APPROVALS**

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